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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,214	04/21/2004	Jonathan Gutwein	001230	3213
29569	7590	12/06/2007		
FURR LAW FIRM 2622 DEBOLT ROAD UTICA, OH 43080			EXAMINER MAEWALL, SNIGDHA	
			ART UNIT 1615	PAPER NUMBER
			MAIL DATE 12/06/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/709,214

Applicant(s)

GUTWEIN, JONATHAN

Examiner

Snigdha Maewall

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Summary

1. Receipt of Applicant's arguments and amended claims filed on 09/25/2007 is acknowledged.

Claims 1-18 have been cancelled and new claims 19-23 have been added in this Application.

Accordingly claims 19-23 are pending in this application and claims **19-23** will be prosecuted on the merits.

Due to Applicants amendments, the rejections made over 35 USC 112.1 and 35 USC 112.2 have been withdrawn.

The following is a new rejection necessitated by applicant's amendments.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chokshi (US Pg Pub. 2003/0059403 A1) in view of Riley (US Patent No. 5,976,568) and further in view of Alviar et al. (US Pg Pub No. 2002/0187204 A1).

Chokshi discloses a composition containing phaseolamin and a mineral, such as chromium or vanadium or both. The invention is directed to methods for controlling carbohydrate cravings, inducing weight loss and inhibiting the absorption of dietary starch (abstract). Phaseolamin is derived from Phaseolus Vulgaris or the white kidney beans, phaseolus is effective for weight loss and carbohydrate binding (page 3, paragraph [0045]. Vanadium chelate is taught on page 3 paragraph [0026]. Various additives that can be added to the composition are calcium carbonate (page 3, paragraph [0038]).

Chokshi does not disclose vitamins such as B2 and B12, Coenzyme Q 10, vegetable carbon and the supplement formulation in capsule. However, Riley discloses dietary supplement compositions for optimizing health benefits, methods and disease prevention, protection against nutritional losses and deficiencies due to dietary patterns (title and abstract). Example 2 and claim 1 depict presence of vitamin B12, vitamin B2, Coenzyme Q10 and chromium. The formulation can be in capsule form (see abstract). The oral dosage form may include talc, calcium carbonate and FD&C colorings (column 22, lines 35-39).

It would have been obvious to the one of ordinary skilled in the art at the time the invention was made to incorporate vitamin B12, vitamin B2, coenzyme Q10 in the

formulation disclosed by Chokshi because such ingredients constitute the benefit of being dietary supplement and thus help in nutritional benefits. A skilled artisan would thus have been motivated to prepare a composition comprising vitamin B12, vitamin B6 and coenzyme Q10 and vegetable carbon with phaseolus vulgaris and calcium carbonate as a supplement with a reasonable expectation of success.

Chokshi and Riley do not specifically teach chromium picolinate. However, Alviar et al. discloses a diet composition comprising chromium picolinate and vanadium compound for managing body weight. Since such a composition helps in managing body weight, it would have been obvious to the one of ordinary skill in the art at the time the invention was made to incorporate vanadium and chromium picolinate in the composition forwarded by Chokshi and Riley comprising phaseolus vulgaris, calcium carbonate and vegetable carbon with a reasonable expectation of success. It should be noted that with respect to the various amounts claimed, it is the position of the examiner that it would have been within the purview of a skilled artisan to optimize the amounts of various components in the composition with the experimental manipulation. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Response to Arguments

4. Applicant's arguments filed on 09/25/2007 have been fully considered but they are not persuasive.

Applicant's argue that the examiner has not addressed the uses of the claimed composition in the rejections. Applicant argues that the "the uses are completely different and the combination of these reference is not oblivious to someone skilled in arts and none of these references are for a carbohydrate blocker and hangover preventor." Applicants arguments are not persuasive because the claims are drawn to the composition and the intended use of the composition does not hold patentable weight. It should be noted that the references used are in the same field of endeavor and since the structures of various components are same as claimed, it is the position of the examiner that the composition comprising the claimed components will exhibit the same function. "[T]he discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not render the old composition patentably new to the discoverer." *Atlas Powder Co. v. Ireco Inc.*, 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977).

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Snigdha Maewall whose telephone number is (571)-272-6197. The examiner can normally be reached on Monday to Friday; 8:30 a.m. to 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

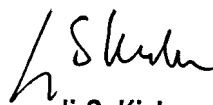
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USPTO Customer Service Representative or access to the automated
information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Snigdha Maewall

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